



ILLINOIS COMMERCE COMMISSION

October 18, 2002

Union Pacific Railroad Company,
Petitioner,

v.

City of Belvidere, Illinois,
Respondent.

T02-0082

Petition of Union Pacific Railroad Company ("UP") seeking review and determination as to the adequacy of railroad signalization at the intersection of South State Street and the trackage of the UP (Crossing Number 174 482H) at Milepost 78.28 because of roadway, median and vegetation modifications undertaken by the City of Belvidere, Illinois.

TO ALL PARTIES OF RECORD:

ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER

Attached is a copy of the Administrative Law Judge's Proposed Order in the above referenced matter.

The Administrative Law Judge's Proposed Order is being sent to you pursuant to the Commission's Rules of Practice (83 Ill. Adm. Code 200). Your case is a "contested case" or "licensing case" as defined in Section 200.40 of the Rules and, therefore, the Hearing examiner is required under Section 200.820 to issue a Proposed Order to all parties.

Under Section 200.830 of the Rules, exceptions to the Proposed Order and replies thereto may be filed by the parties within the time periods established by the rules of such other times as fixed by the hearing examiner. The times for filing exceptions and replies are fixed at ten days and five days, respectively.

Entered:

June B. Tate

June B. Tate
Administrative Law Judge
Review & Examination Program

JBT:rsc

Railroad Staff: Mr. Berry

DOCKETED

STATE OF ILLINOIS

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PROPOSED ORDER

By the Commission:

On August 2, 2002, Union Pacific Railroad Company ("the Railroad") filed with the Illinois Commerce Commission ("Commission") the above-captioned verified petition therein naming as Respondent the City of Belvidere, Boone County, Illinois ("the City").

Pursuant to proper notice, the matter came on for hearing before a duly authorized Administrative Law Judge of the Commission at the Commission's Chicago office on September 26, 2002. The City and the Railroad were represented by counsel. A member of the staff of the Railroad Section, Transportation Division of the Commission, Robert S. Berry, appeared. Testimony and evidence were elicited from Donald R. York, Manager of Industry and Public Projects of the Railroad and Brent Anderson, Assistant Director of Public Works of the City. At the conclusion of a full and public hearing on the aforementioned date, the record was marked "Heard and Taken."

The petition was filed due to personal observations of representatives of the Railroad that the City had undertaken a beautification and parking upgrade program at the subject crossing. The City has eliminated a pre-existing highway median strip, added decorative paving bricks and planted trees along the highway right-of-way. It was thought that these modifications had the potential of reducing the visibility of a portion of the flashing light railroad signals when the vegetation reaches maturity.

Research reveals that the Commission, by Commission X-Resolution 8748 entered on January 4, 1980, required the Railroad to install the cantilever mounted automatic flashing light signals. Under the terms of a Commission

order entered in Docket 87-0048 on June 10, 1987, the Commission required the Railroad to install 12-inch roundels for the signal lights. The last modification to the warning devices involved the installation of remote monitors in May 2002, by Commission order T00-0095.

South State Street is a four-lane thoroughfare which had a median in its center. This median was removed in 1986 when decorative brick sidewalks were laid at each of the four quadrants and new vegetation planted.

Mr. York, the Railroad's witness, testified that the existing automatic warning devices do not violate any Commission rule or regulation or any rule or regulation of the Manual on Uniform Traffic Control Devices. He witnessed no visibility problem with the existing signal system for approaching motorists. He further testified that gates are not necessary at this location.

According to the Illinois Department of Transportation, the crossing is traversed by 13,900 vehicles daily. South State Street is also a school bus route. Rail traffic consists of four freight trains daily with a maximum timetable speed of forty miles per hour (40 MPH). However, information is that train traffic operates at much lower speeds.

There have been four accidents at the crossing since 1955. Accidents in March 1955 and December, 1976 were collisions between trains and automobiles which did not result in injury or fatality. In November 1997, an automobile struck a train in snowy weather and there was one fatality. In December 2000, an automobile struck a freight train with no reported injuries or fatalities.

The City's witness, Mr. Anderson, testified that the types of plants introduced include shrubs such as yews, barberry, spirea, and dwarf viburnum. Along South State Street, ash trees have been planted. They can reach a height of forty feet (40') when mature in thirty to forty (30-40) years from germination. The City has contracted to have the plants trimmed every month or as needed.

The only planting of concern to Mr. Berry is an ash tree in the northeast quadrant. It is only half grown and will not reach maturity for another fourteen to twenty-four (14-24) years. Because of its future size, it will make proper visibility of the warning devices impossible. It is the recommendation of the Commission's Rail Safety Specialist that this ash tree be removed before its horizontal branches obscure the light units on the cantilever masts.

Should the City be able to prove that 1) the ash tree is of a low growing variety, 2) its branches are trimmed up from the base of the tree, and 3) those branches that hang over the roadway in front of the cantilever signal unit are trimmed so as not to decrease visibility at the crossing, there is no objection to retention of the ash tree in the northeast quadrant.

The Commission, having considered the evidence and being fully advised in the premises, is of the opinion and finds that:

- (1) Union Pacific Railroad Company is a corporation engaged in the transportation of persons and/or property by rail in the State of Illinois, and as such is a rail carrier as defined by the Illinois Commercial Transportation Law;
- (2) the City of Belvidere, Boone County, Illinois, is a political subdivision organized and existing under and by virtue of the laws of the State of Illinois;
- (3) the Commission has jurisdiction of the parties hereto and the subject matter hereof;
- (4) the Commission finds that public safety and convenience have not been compromised by the beautification plan undertaken by the City of Belvidere in 1986;
- (5) the aforesaid beautification plan should therefore be approved;
- (6) the Commission finds that the warning devices at the South State Street crossing of the tracks of the Union Pacific Railroad Company are adequate and sufficient to protect the general traveling public;
- (7) the ash tree in the northeast quadrant of the subject crossing should be removed unless it is shown that it is of a low growing variety, it continues to be trimmed upward from its base, and its horizontal branches are trimmed in such manner that they do not obscure the cantilever signal unit;
- (8) the City is ordered and required to take action within sixty (60) days as stated in Finding (7), provide information to the Director of Processing and Information, Transportation Division of the Commission as requested, as to the mature height of the subject ash tree, or remove the tree;
- (9) Chapter 625 ILCS 5/18c-1701 and 5/18c-1704 require each "person" as defined by 5/18c-1104 to comply with every regulation or order of the Commission; these sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the State not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense; while the Commission expects all parties to comply with this Order in all matters addressed herein and in a

timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the beautification plan heretofore executed by the City of Belvidere be and it is hereby approved.

IT IS FURTHER ORDERED that the ash tree in the northeast quadrant be removed within sixty (60) days of the date of this Order.

IT IS FURTHER ORDERED that in the alternative, the ash tree must be trimmed upward from its base and the horizontal branches over the roadway trimmed so as not to obscure the light units on the cantilever masts within sixty (60) days of the date of this Order.

IT IS FURTHER ORDERED that information should be provided within sixty (60) days that the subject ash tree is of a low growing variety to the Director of Processing and Information, Transportation Division of the Commission.

IT IS FURTHER ORDERED that any person making a Request for Extension of Time up to thirty (30) days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than fourteen (14) days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting an extension of time which exceeds thirty (30) days must file a Petition for Supplemental Order with the Director of Processing and Information no later than twenty-one (21) days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.

IT IS FURTHER ORDERED that Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny request for Extension of Time and Petitions for Supplemental Orders if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that the Commission shall retain jurisdiction for the purpose of issuing any supplemental order or orders as it may deem necessary.

IT IS FURTHER ORDERED that in accordance with Chapter 625 ILCS 5/18c-2201 and 5/18c-2206 of the Illinois Commercial Transportation Law, this is a final order subject to the Administrative Review Law.

By Order of the Commission this day of, 2002.

Chairman